



MONTGOMERY COUNTY ETHICS COMMISSION

Public Meeting of March 11, 2014

Minutes

IN ATTENDANCE:

Commissioners:

Kenita V. Barrow, Chair
Mark L. Greenblatt, Vice-Chair
Claudia Herbert
Joseph C. Kale, Jr.

Staff Member:

Robert W. Cobb, Chief Counsel
Erin E. Chu, Program Manager I

Member of the Public

Gordon Klang

Item 1. The meeting was called to order at 7:15 p.m.

Item 2. The minutes from the 2/18/14 meeting were approved.

Item 3. The Commission discussed the draft legislation concerning, in particular, definitions, financial disclosure, and gifts. Robert Cobb provided an overview and background regarding the legislation. In particular, he detailed the State requirements regarding the County's ethics law, how the State interpreted the State Ethics Law to require equivalency or greater requirements, but minimized the import of the State Ethics Law's mandate to local jurisdictions to adjust their laws to be relevant to conflicts of interest in the particular jurisdiction. At the same time, the State Ethics Commission staff has indicated a preference for somewhat broad and vague restrictions in law, emphasizing the great breadth of discretion of local ethics commissions to interpret the law in such a way to except conduct that it does not find offensive from the application of the broad restrictions it recommends. Cobb indicated that this approach is contrary to notions of appropriate notice to affected persons of what laws, and in particular laws with criminal penalties, provide. The usual and more appropriate approach, according to Cobb, would be to provide better notice through a more specific law as to what is prohibited conduct.

Cobb discussed various concerns with the State approach that were identified by the County Attorney and the Senior Legislative Counsel. The Commission discussed the awkward position it has been placed in by the State Ethics Law and the State Ethics Commission as being, in effect, the middleman between the State Ethics Commission and its views on what are required to be contained in the County's Ethics Law (inclusive of objectionably vague prohibitions) and the staff of the County Executive and County Council – who have specific objections to the State's approach. Moreover, the Commission is cognizant that whatever the Commission recommends or proposes for legislation is likely to be substantially altered by the County Council, potentially creating concern by the State Ethics Commission regarding whether those changes meet the State's requirements. With reference to the conflicting inputs of the State Ethics Commission's staff (along with their insistence on their inputs being required) and the County Attorney and Senior Legislative Counsel, the Ethics Commission decided to proceed in a manner that shows deference to the State Ethics Commission's requirements. As a consequence of this decision and approach, Cobb is to make the changes to the proposal that have been requested by the State Ethics Commission. Once that is done, the Commission will propose the legislation, and any changes to that proposal that are dissonant with what the State Ethics Commission has been insisting upon will be a matter for the proponents of the changes to take up with the State Ethics Commission. Among other things, a volunteer Commission meeting once a month cannot efficiently or effectively be responsible for negotiating for each side to the other.

Now there are elements of the proposal that go beyond State requirements that the Ethics Commission believes are appropriate and worthwhile, and the Ethics Commission will be interested in the treatment of these provisions, and in that sense is a stakeholder, happy to address its position in the legislation process.

Item 4. Erin Chu updated the Commission on the status of financial disclosure submissions for the 2013 Annual filing season, explained the use of reminder notifications, and described plans for one final reminder to be sent to filers on March 31, 2014.

Item 5. Cobb discussed a meeting held between OHR and Ethics Commission staff on February 27, 2014, regarding County-wide ethics education. This meeting involved a request from Cobb to present brief ethics training at new employee orientation sessions. While OHR thought having online ethics training to be a good and workable idea, OHR rejected the idea of brief ethics training at the biweekly orientation programs. The Ethics Commission expressed its disappointment and dissatisfaction with OHR's position on the subject and encouraged Cobb to continue seeking approval for inclusion of a brief ethics presentation at the biweekly orientation programs.

Item 6. Cobb briefed the Commission on the Maryland Open Meetings Act and the process currently in place for determining whether an item for Commission consideration appears on the Public or the Administrative agenda. Cobb made specific reference to the statutory provisions in the County's Public Ethics Law which require that certain matters

be handled confidentially. Whether these confidentially provisions apply to certain matters is not absolutely clear, and could be subject to multiple interpretations.

Cobb then introduced Gordon Klang, a member of the public, who was offered the opportunity to voice his ideas on how the Ethics Commission makes a determination on what issues may be discussed at the Public Meeting versus the Administrative Meeting. From Mr. Klang's perspective, if a matter does not involve individual privacy concerns, the matter should be addressed in a public meeting. Based on the discussion, the Commission determined that, as long as a matter will not potentially lead to an Ethics Commission investigation, if no privacy concerns are present, a matter not otherwise specifically required by law to be considered confidentially, could be moved by the Ethics Commission from the Administrative agenda to the Public agenda. Staff is to identify those instances where putting a matter on the Public agenda would be feasible. However, if a privacy concern arises, the item would immediately revert to an Administrative topic.

Item 7. Cobb asked if the Commission had a preference for when to present three former Commissioners with Certificates of Appreciation. The Commission asked Cobb to find a future meeting date that is mutually agreeable to all three former Commissioners and have the Certificates created for the occasion.

The meeting adjourned 9:05.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert W. Cobb", with a stylized, cursive script.

Robert W. Cobb